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ting in evidence a rule regulating the duties of station masters was not prejudicial to the carrier.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 1068, 1069, 4153-4157, 4166; Dec. Dig. § 1050.\* 1 Va.-W. Va. Enc. Dig. 592; 14 Va.-W. Va. Enc. Dig. 92; 15 Va.-W. Va. Enc. Dig. 68.]

**8. Pleading (§ 237\*)—Trial Amendments—Power of Court.**—Code 1904, § 3384, authorizing amendments to conform to the proof, if substantial justice will be promoted and the adverse party not prejudiced, is to be liberally construed, and the court may allow plaintiff, suing a railroad company and a special police officer for unlawful arrest, to amend his declaration so as to state a cause of action on the theory that an employee of the company assisted the officer in making the arrest, while the original declaration proceeded on the theory that the company was liable for the acts of the officer.

[Ed. Note.—For other cases, see Pleading, Cent. Dig. §§ 603-619; Dec. Dig. § 237.\* 1 Va.-W. Va. Enc. Dig. 319; 14 Va.-W. Va. Enc. Dig. 43; 15 Va.-W. Va. Enc. Dig. 41.]

**9. Pleading (§ 380\*)—Amendments—Evidence.**—The court permitting plaintiff to amend his declaration, may also permit him to introduce evidence in support of the declaration as amended.

[Ed. Note.—For other cases, see Pleading, Cent. Dig. §§ 1237, 1239-1252; Dec. Dig. § 380.\* 1 Va.-W. Va. Enc. Dig. 319; 14 Va.-W. Va. Enc. Dig. 43; 15 Va.-W. Va. Enc. Dig. 41.]

Error to Law and Chancery Court of City of Roanoke.

Action by William H. Perdue against the Norfolk & Western Railway Company and another. There was a judgment for plaintiff against the railroad company only, and said company brings error. Affirmed.

*McCormick & Smith*, of Roanoke, for plaintiff in error.

*Hairston & Willis*, of Roanoke, for defendant in error.

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COMMONWEALTH *v.* ROUND MOUNTAIN MINING & MFG.  
CO.

Jan. 12, 1915.

[83 S. E. 1061.]

**Appeal and Error (§ 15\*)—Separate Causes—Single Writ of Error—Dismissal.**—Where the owner of land in each of three years filed an application to correct assessments on it, and the separate proceedings were removed by separate orders to the lower court, which decreed relief to the owner, rendering separate judgments in each of the cases, in which the commonwealth made separate defenses and took

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

separate assignments of error, the cases could not be brought up on a single writ of error.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 59, 60; Dec. Dig. § 15.\* 1 Va.-W. Va. Enc. Dig. 503.]

Error to Corporation Court of Radford.

Separate proceedings by the Round Mountain Mining & Manufacturing Company against the Commonwealth of Virginia to collect assessments of lands owned by the company. Separate judgments for plaintiff, and the Commonwealth brings a single writ of error, and defendant moves to dismiss. Writ dismissed.

*The Attorney General*, for the Commonwealth.

*Jackson & Henson*, of Roanoke, for defendant in error.

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WYATT et al. v. GLEASON.

Jan. 12, 1915.

[83 S. E. 1069.]

1. **Habeas Corpus (§ 99\*)—Custody of Child—Right.**—Where the father, the sole living parent, acquiesced in the act of his sister-in-law and her husband in exercising control over, caring for, and becoming attached to his child as though she were their own, and it clearly appeared that they were proper persons to raise and provide for her, and that she could not have a more suitable home, and there was no evidence as to the care and affection she would be likely to receive if surrendered to her father and youthful stepmother, the custody of the child could not properly be interfered with.

[Ed. Note.—For other cases, see Habeas Corpus, Cent. Dig. § 84; Dec. Dig. § 99.\* 10 Va.-W. Va. Enc. Dig. 635.]

2. **Habeas Corpus (§ 99\*)—Custody of Child—Discretion.**—Where the father has voluntarily relinquished custody of his infant child to a suitable female relative, the court will exercise its discretion according to the facts, having primarily in view the welfare of the child.

[Ed. Note.—For other cases, see Habeas Corpus, Cent. Dig. § 84; Dec. Dig. § 99.\* 10 Va.-W. Va. Enc. Dig. 635.]

Error to Corporation Court of Lynchburg.

Habeas corpus by R. T. Gleason against Bessie May Wyatt and another. Judgment for plaintiff, and defendants bring error. Reversed.

*John L. Lee*, of Lynchburg, for plaintiffs in error.

*Coleman, Easley & Coleman*, of Lynchburg, for defendant in error.

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.